

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO INDUSTRIES, INC.,

Plaintiff,

-vs-

SAP AMERICA, INC., et al.,

Defendant.

: CASE NO. 1:08 CV 02755

: ORDER

UNITED STATES DISTRICT JUDGE LESLEY WELLS

This Court, having reviewed Hodell's and SAP's deposition designations for Dale Van Leeuwen and the parties' respective objections thereto, resolves those objections as follows.

I. SAP'S OBJECTIONS TO HODELL'S DEPOSITION DESIGNATIONS OF TRIAL TESTIMONY FOR DALE VAN LEEUWEN

Testimony Designated by Hodell	SAP's Objections to Hodell's Designated Testimony
5:14-21. <i>Sustained</i>	<ul style="list-style-type: none"> SAP objects to the introduction of this exhibit and related testimony for the reasons stated in SAP's Objections to Plaintiff's Proposed Trial Exhibit List at Proposed Exhibit No. 230. SAP additionally objects to these questions and answers under Federal Rules of Evidence 402 and 403.
6:22-8:3.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, and 802. <i>Sustained</i>
8:18-10:7.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, 404, and 802. <i>Sustained</i>
32:5-33:8.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 403 and 602. <i>Sustained</i>
33:9-34:3.	<ul style="list-style-type: none"> SAP objects to the introduction of these attorney comments under Federal Rules of Evidence 402 and 403. <i>Sustained</i>
34:4-35:15.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 602, and 802. <i>Sustained</i>
38:23-24.	<ul style="list-style-type: none"> SAP objects to this answer under Federal Rule of Evidence 802. <i>Sustained</i>
42:3-43:11.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rule of Evidence 802. <i>Sustained</i>
44:13-46:5.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 403 and 802. <i>Sustained</i>
47:23-48:9.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Sustained</i>
49:16-50:25.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Overruled</i>
67:10-19.	<ul style="list-style-type: none"> SAP objects to the introduction of this questions and answer for the reasons stated in SAP's Motion in Limine No. 6. <i>Overruled</i>

	<ul style="list-style-type: none"> SAP additionally objects to this question and answer under Federal Rule of Evidence 802.
71:10-72:3.	<ul style="list-style-type: none"> SAP objects to the introduction of these attorney comments under Federal Rules of Evidence 402 and 403. <i>Sustained</i>
72:4-75:13.	<ul style="list-style-type: none"> SAP objects to the introduction of this exhibit and related testimony for the reasons stated in SAP's Objections to Plaintiff's Proposed Trial Exhibit List at Proposed Exhibit No. 4. <i>Overruled</i>
78:21-79:6.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, 602, and 802. <i>Sustained</i>
85:3-86:12.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, 602, and 802. <i>Sustained</i>
89:12-25.	<ul style="list-style-type: none"> SAP objects to this question and answer under Federal Rules of Evidence 402, 403, and 602. Moreover, the question is overly vague and ambiguous. <i>Overruled</i>
91:15-22.	<ul style="list-style-type: none"> SAP objects to this question and answer under Federal Rules of Evidence 402 and 403. Moreover, the question is overly vague and ambiguous. <i>Overruled</i>
91:23-93:14.	<ul style="list-style-type: none"> SAP objects to the introduction of this exhibit and related testimony for the reasons stated in SAP's Objections to Plaintiff's Proposed Trial Exhibit List at Proposed Exhibit No. 124. <i>Overruled</i>
93:25-95:18.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, 602, and 703. <i>Overruled</i>
96:23-97:6.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, and 404. <i>Sustained</i>
97:12-98:13.	<ul style="list-style-type: none"> SAP objects to the introduction of this exhibit and related testimony for the reasons stated in SAP's Objections to Plaintiff's Proposed Trial Exhibit List at Proposed Exhibit No. 5. <i>Overruled</i>
98:14-99:18.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 602 and 802. <i>Sustained</i>
102:2-103:9.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rule of Evidence 802. Moreover, these questions are overly vague and ambiguous. <i>Overruled</i>
103:9-110:25.	<ul style="list-style-type: none"> SAP objects to the introduction of the exhibit and related testimony for the reasons stated in SAP's Objections to Plaintiff's Proposed Trial Exhibit List at Proposed Exhibit No. 13. <i>Overruled</i> SAP additionally objects to these questions and answers under Federal <i>Overruled</i>

	<p>Rules of Evidence 402 and 403.</p> <ul style="list-style-type: none"> • SAP additionally objects to the introduction of the question and answer at 108:10-16 under Federal Rules of Evidence 602. <i>Sustained</i> • SAP additionally objects to the question and answer at 110:7-25 as this question is overly vague and ambiguous. <i>Sustained</i>
112:1-16.	<ul style="list-style-type: none"> • SAP objects to this question and answer under Federal Rule of Evidence 601. <i>Sustained</i>
114:1-17.	<ul style="list-style-type: none"> • SAP objects to the introduction of the exhibit and related testimony for the reasons stated in SAP's Objections to Plaintiff's Proposed Trial Exhibit List at Proposed Exhibit No. 190. <i>Overruled</i>
116:20-118:24.	<ul style="list-style-type: none"> • SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, 602, and 802. <i>Sustained</i>
125:12-132:18.	<ul style="list-style-type: none"> • SAP objects to the introduction of the exhibit and related testimony for the reasons stated in SAP's Objections to Plaintiff's Proposed Trial Exhibit List at Proposed Exhibit No. 198. <i>Sustained</i> • SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, and 601.
133:2-135:11.	<ul style="list-style-type: none"> • SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Sustained</i>
145:22-147:7.	<ul style="list-style-type: none"> • SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Sustained</i>
148:8-151:2.	<ul style="list-style-type: none"> • SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, 601, and 701. <i>Sustained</i>
151:3-16.	<ul style="list-style-type: none"> • SAP additionally objects to these questions and answers under Federal Rules of Evidence 403 and 601. <i>Sustained</i>
154:6-155:10	<ul style="list-style-type: none"> • SAP objects to these questions and answers under Federal Rules of Evidence 602 and 801. <i>Sustained</i>
155:11-156:16.	<ul style="list-style-type: none"> • SAP objects to these questions and answers under Federal Rules of Evidence 602 and 801. <i>Overruled</i>
156:17-	<ul style="list-style-type: none"> • SAP objects to these questions and answers under Federal Rules of <i>Sustained</i>

158:13.	Evidence 402, 403, 602, and 801.
167:7-19.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 602 and 801. <i>Sustained</i>
170:8-171:7.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 602 and 801. <i>Sustained</i>
172:10-173:3.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 602. Moreover, the questions call for speculation. <i>Sustained</i>
200:4-24.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, 802, and 805. <i>Sustained</i>
234:4-236:19.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, 602, and 802. <i>Overruled</i>
239:10-242:18.	<ul style="list-style-type: none"> SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Overruled</i>
253:6-254:24.	<ul style="list-style-type: none"> SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Overruled</i>
255:15-256:14.	<ul style="list-style-type: none"> SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Sustained</i>
256:22-257:18.	<ul style="list-style-type: none"> SAP objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Overruled</i>
260:18-261:3.	<ul style="list-style-type: none"> SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Sustained</i>
287:12-292:17.	<ul style="list-style-type: none"> SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, and 602. <i>Sustained</i>
299:23-301:23.	<ul style="list-style-type: none"> SAP additionally objects to these questions and answers under Federal Rules of Evidence 402, 403, 602, and 611. <i>Sustained</i>

II. HODELL'S OBJECTIONS TO SAP'S DEPOSITION DESIGNATIONS OF TRIAL TESTIMONY FOR DALE VAN LEEUWEN

Testimony Designated by SAP	Hodell's Objection to SAP's Designated Testimony	SAP's Reply to Hodell's Objection
173:04-176:17	Relevance; confusion of the issues <i>Overruled</i>	This testimony is relevant to the issues of whether the witness had any personal knowledge whatsoever about alleged problems experienced by Hodell after go-live of the Business One solution.
187:05-13	Relevance; confusion of the issues <i>Overruled</i>	This testimony is relevant as to the issue of whether the witness was aware of SAP having any knowledge that Business One would not be a good fit for Hodell. This goes to Hodell's fraud claim and to its demand for punitive damages.
214:01-217:01	Relevance; confusion of the issues <i>Overruled</i>	This testimony is relevant as to the issue of how many licenses Hodell actually acquired, intended to acquire, and when these licenses were acquired.
218:06-220:19	Vague, ambiguous, foundation <i>Overruled</i>	Objections to form were not raised at deposition and are therefore waived under FRCP 32(d)(3)(B). This testimony is relevant as to the issue of how many licenses Hodell acquired. A proper foundation has been laid that the witness was the owner of the IBIS Group and that he was involved in negotiating with Hodell the details of how many licenses it would acquire and when.
220:20-221:18	Foundation; speculation; vague <i>Overruled</i>	A proper foundation has been laid that the witness was the owner of the IBIS Group and that he was involved in negotiating with Hodell the details of how many licenses it would acquire and when. Assuming that the sole objection by Hodell in this portion of testimony was a form objection that the question asked was vague, the question was not vague, and the witness was able to answer.
223:22-225:15	Foundation; hearsay <i>Overruled</i>	A proper foundation has been laid that the witness was the owner of the IBIS Group and that he was involved in negotiating with Hodell the details of

		<p>how many licenses it would acquire and when.</p> <p>These out-of-court statements may be offered against LSi because they were made by LSi employees on a matter within the scope of that relationship and while it existed. 801(d)(2).</p>
225:18-227:11	<p>Foundation; lack of personal knowledge; hearsay, speculation</p> <p><i>Sustained</i></p>	<p>A proper foundation has been laid that the witness was the owner of the IBIS Group and that he was involved in negotiating with Hodell the details of how many licenses it would acquire and when.</p> <p>These out-of-court statements may be offered against LSi because they were made by LSi employees on a matter within the scope of that relationship and while it existed. 801(d)(2).</p>
227:22-231:22	<p>Speculation; hearsay; lack of personal knowledge</p> <p><i>Sustained</i></p>	<p>A proper foundation has been laid that the witness was the owner of the IBIS Group and that he was involved in negotiating with Hodell the details of how many licenses it would acquire and when.</p> <p>Moreover, the contents of the email discussed may be offered against LSi because it was made by an LSi employee on a matter within the scope of that relationship and while it existed. 801(d)(2).</p>
271:14-272:12	<p>Speculation, lack of personal knowledge, calls for legal conclusion</p> <p><i>Overruled</i></p>	<p>A proper foundation has been laid that the witness was the owner of the IBIS Group and that he was involved in negotiating with Hodell the details of the project. Moreover, the witness was expressly asked about his personal view.</p>
272:16-273:03	<p>Foundation; relevance; hearsay</p> <p><i>Overruled</i></p>	<p>A proper foundation has been laid that the witness as the owner of the IBIS Group, was later employed by LSi, and that he served in a critical role during the nascent stages of this project.</p> <p>The testimony is relevant as to the witness's impression of what Hodell believed about LSi-IBIS and whether, in his impression, it likely believed that LSi-IBIS was the same company as SAP.</p> <p>These out-of-court statements may be offered against LSi because they were made by LSi employees on a matter within the scope of that relationship and while it existed. 801(d)(2).</p>

III. HODELL'S OBJECTIONS TO SAP'S COUNTER-DESIGNATIONS OF TRIAL TESTIMONY FOR DALE VAN LEEUWEN

No Hodell objections to SAP's counters.

IV. SAP'S OBJECTIONS TO HODELL'S COUNTER-DESIGNATION OF TRIAL TESTIMONY FOR DALE VAN LEEUWEN

Testimony Counter-Designated by Hodell	SAP's Objection to Counter-Designated Testimony
176:18-177:4.	<ul style="list-style-type: none">SAP objects to these questions and answers under Federal Rule of Evidence 602. <i>Overruled</i>

Leslee Dills.
US District Judge
NDOH